



POLICE DEPARTMENT

May 27, 2015

MEMORANDUM FOR: Police Commissioner

Re: Detective Gerard Delprete  
Tax Registry No. 923749  
Narcotics Borough Staten Island  
Disciplinary Case No. 2013-10247  
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The above-named member of the Department appeared before the Court on January 9, and January 22, 2015, charged with the following:

1. Said Detective Gerard Delprete, on or about April 19, 2012, at approximately 1910 hours, while assigned to Narcotics Borough Staten Island and on duty, in the vicinity of Watchogue Road and Willowbrook Road, Richmond County, abused his authority as a member of the New York City Police Department, in that he frisked Person A without sufficient legal authority.

P.G. 212-11, Page 1, Paragraph 2 – STOP AND FRISK

2. Said Detective Gerard Delprete, on or about April 19, 2012, at approximately 1910 hours, while assigned to Narcotics Borough Staten Island and on duty, in the vicinity of Watchogue Road and Willowbrook Road, Richmond County, engaged in conduct prejudicial to the good order, efficiency or discipline of the New York City Police Department, in that he searched Person A's vehicle without sufficient legal authority.

P.G. 203-10, Page 1, Paragraph 5 – PUBLIC CONTACT – PROHIBITED CONDUCT

3. Said Detective Gerard Delprete, on or about April 19, 2012, at approximately 1910 hours, while assigned to Narcotics Borough Staten Island and on duty, in the vicinity of Watchogue Road and Willowbrook Road, Richmond County, engaged in conduct prejudicial to the good order, efficiency or discipline of the New York City Police Department, in that he searched Person A's property, to wit: a pill container, without sufficient legal authority.

P.G. 203-10, Page 1, Paragraph 5 – PUBLIC CONTACT – PROHIBITED CONDUCT

The Civilian Complaint Review Board (CCRB) was represented by Raasheja Page, Esq. Respondent was represented by James Moschella, Esq., Karasyk & Moschella.

Respondent, through his counsel, entered a plea of Not Guilty to the subject charges. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

### DECISION

Respondent is found Not Guilty.

### SUMMARY OF EVIDENCE PRESENTED

#### Introduction

It is not disputed that on April 19, 2012, Respondent was on duty, in plainclothes, in an unmarked Department vehicle, assigned to Narcotics Borough Staten Island. At about 1900 hours, Respondent stopped a car driven by Person A at the intersection of Watchogue Road and Willowbrook Road. Respondent arrested Person A, conducted a frisk of him and removed a pill container from a key chain inside Person A's vehicle.

Person A was arrested for Criminal Possession of a Controlled Substance and for violating Health Code 3345, which is being in possession of a prescription pill without a prescription or the original pill bottle. Person A was issued a desk appearance ticket. Six months after he was arraigned in Richmond County, the case against Person A was dismissed, presumably because a prescription was produced. Person A also filed a civil action against Respondent. The physician's assistant who signed Person A's prescription has since been convicted of federal charges of conspiracy to distribute controlled substances.

Respondent's attorney produced the prescription that Person A had used in his defense, arguing that the date on the prescription was not clear [Respondent's Exhibit A]. Respondent's attorney stressed that had the complainant appeared to testify, he would have cross-examined Person A extensively about his relationship with the physician's assistant, and when and how Person A had obtained that prescription.

### The CCRB's Case

CCRB had been in contact with Person A who was aware of this trial date. Person A told the CCRB investigator that he would try to work something out with his job to take a half day off and would get back in touch. After that conversation, Person A never responded to phone calls from CCRB. A process server attempted but was unable to serve him.

Instead, CCRB entered in evidence as Exhibit 1 the transcript of Person A's interview, dated May 2, 2012. Person A stated in the interview that as he drove from his brother's house, located at 19 Madison Avenue, he noticed a silver Dodge following his car. At some point the Dodge displayed a light and Person A realized he was being pulled over by the police. After he was stopped, the vehicle's driver, later determined to be Respondent, approached Person A's driver side door. Respondent informed Person A that he was stopped because he was coming from a known drug location. Person A exited the car at Respondent's request and was escorted to the rear. Respondent then placed him in handcuffs. Respondent subsequently patted down his pants and shoes. Respondent went into Person A's pants pockets and removed his ID, credit card, and money. Respondent then returned to Person A's vehicle, reached into the car, and removed the key from the ignition. Attached to the key was a pill container. Respondent opened

the pill container, where he found a small ziplock bag containing one pill and some powder residue. The pill was Alprazolam, a type of anti-anxiety medication.

A second officer conducted a more thorough search of Person A's car. At some point, a police van with two additional officers arrived at the scene. When he got back to his car, Person A saw that the glove box and consoles had been opened and their contents disturbed, a tool bag inside the vehicle had been unzipped and opened, a brown bag had been opened and crumbled, and contents of the vehicle had been "strewn around."

### Respondents' Case

Respondent testified on his own behalf.

### Respondent

Respondent had received information from a "reliable informant" that an individual was obtaining illegal prescription drugs from a residence located on Madison Avenue. The informant had narrowed it down to one of three locations: 19, 23, or 35 Madison Avenue.

On April 19, 2012, Respondent was watching the three targeted homes from his vehicle parked 100 yards away. At some point he observed Person A's car stop in the area of 19 and 23 Madison Avenue. He testified that he was parked too far away to tell which home Person A went in and out of. Person A's vehicle was not parked for very long before he pulled away.

Respondent indicated that he tried to follow Person A's car. At one point, while he was driving, Respondent encountered Person A's car in front of a stop sign. From about 20 feet away, he could see into the driver's side window of Cosentino's car. He observed Person A handling a clear small ziplock bag containing "something white inside." Person A then placed

the ziplock bag in a container, screwed it closed, and began moving his hands around under his steering wheel. Respondent testified that based on his experiences ziplock bags like these are used in the packaging of "controlled substances" and that he has "never seen it used for anything else."

As Person A pulled away from the stop sign, and before he could drive away, Respondent pulled Person A's vehicle over. As he approached the car, Respondent saw the container hanging from Person A's key chain attached to the ignition key. Respondent asked Person A to step out of the vehicle. Person A told Respondent he was coming from his brother-in-law's home but could not recall the address.

Respondent believed he had probable cause for arrest. After Person A exited the vehicle, Respondent gave him a "quick pat-down" and handcuffed Person A. Then Respondent frisked Person A's waist area, legs, and socks and shoes.

Respondent returned to the vehicle, leaned in, and retrieved the pill container that was attached to the key. He testified that he did not search any other part of the vehicle. Respondent opened the container and removed the ziplock bag containing the one pill. The pill had a stamp on it that led Respondent to conclude that it was either "Xanax or Alprazolam." Respondent called for a prisoner transport van and Person A was transported to the precinct.

### FINDINGS AND ANALYSIS

#### Specification No. 1

Respondent is charged with frisking Person A without sufficient legal authority.

CCRB did not charge Respondent with making an improper arrest. Respondent had probable cause to make an arrest based on his observations. Respondent had made a number of arrests in Staten Island for possession of drugs that did not have prescriptions. He saw Person A leaving one of the houses he had been assigned to watch and from where a known drug dealer was operating. Respondent watched Person A handling a "clear ziplock, plastic ziplock, about like a square-inch big, looking at it by his steering wheel." From his experience as a narcotics officer, Respondent was aware that small ziplock bags are usually used to hold controlled substances. The ziplock contained a white substance, which looked to Respondent "like either a pill or maybe something in a cocaine form, crack cocaine." He saw Person A place the ziplock bag in a pill container and move his hands around the area of his steering wheel.

Respondent's testimony about his observations were credible and confirmed by Person A's statements and the facts. Person A confirmed that he had been to visit an address which was one of the addresses Respondent had been assigned to watch. Person A was in possession of a ziplock bag with a white substance, which turned out to be Xanax, and for which, at the time that he was arrested, Person A did not have a prescription.

In conjunction with a lawful arrest, Person A had sufficient legal authority to frisk Person A. (*See Disciplinary Case No. 2013-9868* (Dec. 19, 2014) in which, because Respondent had probable cause to arrest, any frisk or search that occurred as part of the arrest was consistent with both search and seizure law and Department guidelines.)

Accordingly, Respondent is found Not Guilty of Specification No. 1.

Specification Nos. 2 and 3

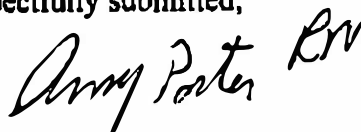
Respondent is charged with searching Person A's vehicle and pill container without sufficient legal authority.

Person A indicated that another officer, and not Respondent, conducted a complete search of his vehicle. This comports with Respondent's testimony that he did not search any other part of the vehicle aside from when he reached in to retrieve the pill container.

Respondent credibly testified that he walked over to Person A's vehicle, leaned in the open driver's side door, and removed the pill container from the ignition key chain. Since Respondent had probable cause to arrest Person A, Respondent was permitted to search the reachable area of Person A's vehicle. *New York v. Belton*, 453 U.S. 454 (1981). Besides searching the reachable area of the vehicle, Respondent was permitted to search all containers found in the car as a contemporaneous incident of the arrest. *Id.* at 460.

Accordingly, Respondent is found Not Guilty of Specification Nos. 2 and 3.

Respectfully submitted,

 RM

Amy J. Porter

Assistant Deputy Commissioner – Trials

**APPROVED**

JUN 19 2018  
  
WILLIAM J. BRAYTON  
POLICE COMMISSIONER